



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Robert G. Burnley  
Director

Francis L. Daniel  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

**CAPITAL CONCRETE, INC.**

**Registration No. VAG110036**

**Registration No. VAG110058**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Capital Concrete, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions:**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Regulation” means 9 VAC 25-193-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Ready-Mixed Concrete Plants.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

8. "Permit" means VPDES General Permit for Ready-Mixed Concrete Plants No. VAG11, which became effective on October 1, 2003 and expires on September 30, 2008.

### **SECTION C: Finding of Facts and Conclusions of Law**

1. Capital Concrete, Inc. ("Capital") owns and operates ready-mixed concrete plants located at 2732 Sonic Drive, Virginia Beach, Virginia ("Virginia Beach facility"), and 400 Stapleton Avenue, Norfolk, Virginia ("Norfolk facility"). Capital is subject to the Permit through Registration No. VAG110058 for the Virginia Beach facility, and Registration No. VAG110036 for the Norfolk facility, which were issued October 17, 2003 and expire when the Permit expires on September 30, 2008. The Permit authorizes Capital to discharge storm water associated with industrial activities via outfall 001.
2. On October 7, 2004, DEQ Compliance Staff (Staff) conducted a routine inspection of the Virginia Beach facility and documented deficiencies, which included: (a) failure to develop and/or maintain an Operations and Maintenance ("O & M") Manual, and make available for Staff review; (b) failure to conduct daily freeboard inspections and maintain an inspection log as required by the Permit; (c) failure to update its Storm Water Pollution Prevention Plan ("SWP3") to include new Permit requirements and required signature; (d) failure to perform and/or document quarterly visual examinations of storm water quality as required by the Permit; (e) failure to perform and/or document monthly inspections as required by the approved SWP3; and (f) failure to conduct and/or document the comprehensive site compliance evaluation ("CSCE") for calendar year 2003.
3. On October 18, 2004, Staff conducted a routine inspection of the Norfolk facility and documented deficiencies, which included: (a) failure to develop and/or maintain an O&M Manual, and make available for Staff review; (b) failure to conduct daily freeboard inspections and maintain an inspection log as required by the Permit; (c) failure to update its SWP3 to include new Permit requirements and required signature; and (d) failure to perform and/or document quarterly visual examinations of storm water quality as required by the Permit. In addition, Staff observed a discharge containing concrete solids at storm water outfall 001, which initiated from a small pit while the pit was in the process of having solids removed. The volume of the discharge is unknown. The discharge was not reported to DEQ as required by the Permit.
4. Part I.B of the Permit requires Capital to develop and maintain an O&M Manual for its Permitted facilities within 90 days after the date of coverage under the Permit. Part I.B of the Permit further provides that the O&M Manual shall be made available to the Department upon request. Capital violated its Permit by failing to develop, maintain, and make available for review, an O&M Manual for its Virginia Beach and Norfolk facilities.

5. Part I.B.10 of the Permit requires Capital to conduct daily freeboard inspections and maintain an inspection log which shall be kept on site and made available to the Department upon request. Capital violated its Permit by failing to conduct and document daily freeboard inspections for its Virginia Beach and Norfolk facilities.
6. Part II.D of the Permit requires Capital to conduct and document a quarterly visual examination of storm water discharge from each outfall. Capital violated its Permit by failing to conduct and document the quarterly visual examination of storm water at its Virginia Beach and Norfolk facilities.
7. Part II.G of the Permit provides that any facility, which was covered by the previous Permit, develop and implement a SWP3 for that facility within 120 days after the date of coverage under the reissued Permit. The Permit requires Capital to maintain the SWP3 on site and make it available to the Department upon request. The Virginia Beach and Norfolk facilities were both covered under the previous Permit. Capital violated its Permit by failing to modify its SWP3 to include the requirements of the current Permit for the Virginia Beach and Norfolk facilities.
8. Part II.G.4.c (4) of the Permit requires Capital to perform routine facility inspections and maintain records of inspections in accordance with the SWP3. The SWP3 requires Capital to conduct monthly routine facility inspections and maintain records of inspections. Capital violated its Permit by failing to conduct and document inspections in accordance with the SWP3 for its Virginia Beach facility.
9. Part II.G.4.d of the Permit requires Capital to conduct and document a CSCE no less than once per year and make it available to the Department upon request. Capital violated its Permit by failing to conduct and/or document the CSCE for calendar year 2003 for its Virginia Beach facility; and failing to make documentation of the CSCE available to the Department upon request at the Virginia Beach and Norfolk facilities.
10. Part III.F of the Permit prohibits discharges into state waters except in compliance with the Permit. The Permit authorizes Capital to discharge storm water associated with industrial activities via outfall 001. The Permit does not authorize Capital to discharge process wastewater. Capital violated its Permit by causing the discharge of process wastewater from its Norfolk facility via outfall 001, which was observed by staff during a routine annual inspection on October 18, 2004. Capital has indicated that this was a onetime accidental discharge, which has since been mitigated.
11. Part III.G of the Permit requires Capital to report any unauthorized discharges to DEQ immediately upon discovery of the discharge, but in no case later than 24

hours of said discovery. The Permit also requires Capital to provide a written report to DEQ within five days of discovery of the discharge. Capital violated its Permit by failing to report the unauthorized discharge to DEQ in accordance with its Permit.

12. On October 29, 2004, DEQ issued Notice of Violation ("NOV") W2004-10-T-0004 to Capital regarding its Virginia Beach facility, advising Capital of the referenced inspection report, which included the deficiencies referenced in paragraph two of this order.
13. On November 29, 2004, DEQ received a response from Capital regarding the referenced inspection report and NOV for its Virginia Beach facility. The response included an updated SWP3 and O&M Manual. Capital indicated in its response that copies of the CSCE for 2003 and the monthly inspection reports were located in its office. Capital also enclosed a copy of the quarterly visual storm water quality inspection report for the 4<sup>th</sup> quarter of 2004. Since the issuance of the NOV, Capital has indicated that they have taken significant measures to ensure that all required inspections are conducted and documented in accordance with the permit requirements.
14. On November 4, 2004, DEQ issued NOV W2004-11-T-0001 to Capital regarding the Norfolk facility, advising Capital of the referenced inspection report, which included the deficiencies referenced in paragraph three of this Order.
15. On November 16, 2004, DEQ received a response from Capital regarding the referenced inspection report and NOV for its Norfolk facility. The response included an updated SWP3, documentation of daily freeboard for part of November 2004, and an O&M Manual. Capital enclosed a copy of the quarterly visual storm water quality inspection report for the 4<sup>th</sup> quarter of 2004. In addition, Capital indicated they have redesigned the pit where the discharge was observed to prevent future spills. Since the issuance of the NOV, Capital has indicated that they have taken significant measures to ensure that all required inspections are conducted and documented in accordance with the permit requirements.

#### **SECTION D: Agreement and Order**

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders Capital, and Capital agrees to comply with the Permit. In addition, the Board orders Capital, and Capital voluntarily agrees to pay a civil charge of \$3,220 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Capital's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Capital, for good cause shown by Capital, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice(s) of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Capital admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Capital consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Capital declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Capital to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Capital shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Capital shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Capital shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Capital intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Capital. Notwithstanding the foregoing, Capital agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Capital. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Capital from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Capital voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28<sup>th</sup> day of September, 2005.

Francis L. Daniel  
Francis L. Daniel, Tidewater Regional Director  
for Robert G. Burnley, Director  
Department of Environmental Quality

Capital Concrete, Inc. voluntarily agrees to the issuance of this Order.

By: Helen T. Whittemore  
Date: 7/5/05

Commonwealth of Virginia  
City/County of NORFOLK

The foregoing document was signed and acknowledged before me this 5<sup>th</sup> day of  
July, 2005, by HELEN T. WHITTEMORE, who is  
(name)

VICE PRESIDENT  
(title) of Capital Concrete, Inc., on behalf of Capital.

Rita M. Buena  
Notary Public

My commission expires: 9/30/2006